

**STATE OF NORTH DAKOTA**  
**BEFORE THE COMMISSIONER OF INSURANCE**

**In the Matter of**

**BancInsure, Inc.**  
**5005 North Lincoln Boulevard**  
**Oklahoma City, OK 73105**  
**FEIN 73-1238130,**

**Respondent.**

**CONSENT ORDER**

**FILE NO. CO-05-173**

Commissioner of Insurance Jim Poolman (hereinafter "Commissioner") has determined as follows:

1. BancInsure, Inc. (hereinafter "BancInsure") is a licensed insurance company in North Dakota, NAIC Company Code 18538, FEIN 73-1238130, licensed to sell surety products in North Dakota, but not licensed as a title insurance company in North Dakota.
2. BancInsure filed a product referred to as "Lenders Performance Bond" (the "Bond") with the North Dakota Department of Insurance as a surety product on May 22, 2001, and it was approved on June 19, 2001, a copy of the Bond is attached hereto as Appendix 1.
3. During the period beginning on or about January 1, 2004, through on or about September 28, 2005, BancInsure marketed the Bond.
4. The Bond was marketed to banks and other institutions that make second mortgages and home equity loans, and was not marketed for use in connection with loans made for the purpose of purchasing real property.
5. The Bond insures the lender against inaccuracies made by the borrower in the list of outstanding liens and encumbrances on the loan application and the borrower's affidavit, and the penal sum is limited to no more than the amount necessary to remove the undisclosed encumbrance.
6. During 2004 through on or about September 28, 2005, BancInsure issued a Bond to two credit unions in North Dakota, which in turn relied on said bonds to pay for loss to the lenders' second

mortgage interests due to the existence of unknown or undisclosed encumbrances on the real estate securing the second mortgages, and only one bond is still in effect.

7. The sale of title insurance is regulated by N.D. Cent. Code Chapter 26.1-20.

8. N.D. Cent. Code § 26.1-20-05 provides:

**Title evidence - Examination.** A domestic corporation organized for the purpose of insuring title to real property in this state or of insuring against loss by reason of defective titles to real property, or encumbrances on real property, or a foreign corporation authorized to do business in this state, may not issue any policy, binder, or certificate unless it has secured from a person, firm, or corporation holding a certificate of authority under chapter 43-01 the record title evidence of the title to be insured, and the title evidence has been examined by a person duly admitted to the practice of law as provided by chapter 27-11. The certificate of authority of any corporation violating this section must be revoked as provided by chapter 26.1-02 or 26.1-11.

9. A Certificate of Authority is the license an abstract company receives from the North Dakota Abstractors Board of Examiners under N.D. Cent. Code § Chapter 43-01 that allows the abstract company to prepare and update abstracts of title to real estate.

10. BancInsure issued the Bonds without record title evidence issued by an entity holding a Certificate of Authority under N.D. Cent. Code Chapter 43-01 and without having the title evidence examined by a person duly admitted to the practice of law.

11. On or about September 28, 2005, BancInsure was advised by the North Dakota Department of Insurance that the Bond was subject to N.D. Cent. Code § 26.1-20-05.

**NOW THEREFORE, IT IS HEREBY ORDERED THAT:**

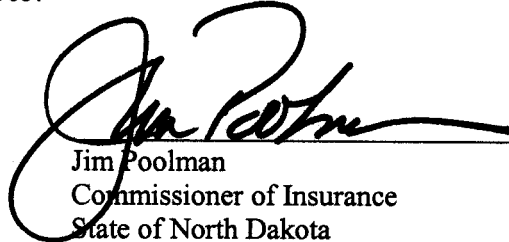
1. BancInsure agrees to pay an administrative penalty of \$500 within 10 days of the date of this Order.

2. BancInsure agrees to cease and desist from marketing its "Lenders Performance Bond" program in North Dakota.

3. BancInsure agrees to terminate the one bond that is still in effect pursuant to its terms and conditions and to honor the contractual obligations accordingly.

4. The use of this Consent Order for competitive purposes by an insurance agent or agency holding a license in the State of North Dakota, or by any company holding a Certificate of Authority, or by anyone on their behalf, may be deemed unfair competition and be grounds for suspension or revocation of said license or authority.

DATED this 29<sup>th</sup> day of November, 2005.

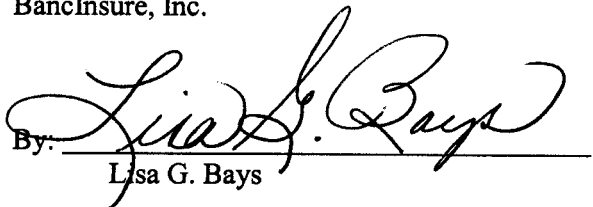
  
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Jim Poolman  
Commissioner of Insurance  
State of North Dakota

#### CONSENT TO ENTRY OF ORDER

The undersigned, Lisa G. Bays, **on behalf of BancInsure, Inc.**, states that she has read the foregoing Consent Order, that she knows and fully understands its contents and effect; that she has been advised of her right to be represented by legal counsel, her right to a hearing in this matter, her right to present evidence and arguments to the Commissioner, and her right to appeal from an adverse determination after hearing; and that by the signing of this Consent to Entry of Order she waives those rights in their entirety, and consents to the entry of this Order by the Commissioner of Insurance. It is further expressly understood that this Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.

DATED this 17<sup>th</sup> day of November 2005.

BancInsure, Inc.

By:   
\_\_\_\_\_  
Lisa G. Bays  
General Counsel  
\_\_\_\_\_  
Title